

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE Y. BUTLER and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Atlanta, GA

*Docket No. 00-1217; Submitted on the Record;
Issued March 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the Office's decision dated December 2, 1999 denying appellant's application for review. As more than one year elapsed between the date of the Office's most recent merit decision finalized on November 17, 1998 and the filing of appellant's appeal, postmarked February 12, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.¹

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.² Section 10.608 provides that, when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.

The facts in this case indicate that, on December 17, 1992, appellant, then a 37-year-old distribution clerk and keyer, filed a written notice of occupational disease alleging that on or around October 21, 1992 she became aware that she had developed carpal tunnel syndrome as a result of her employment duties. The Office accepted her claim for bilateral carpal tunnel

¹ 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.606(b).

syndrome under claim number 60-561644. Appellant was disabled for work for intermittent periods and on April 1, 1997 she filed a claim for a recurrence of disability, which was accepted by the Office. In addition to her carpal tunnel claim, the Office accepted that, on April 17, 1989, she sustained a right shoulder and arm sprain, claim number 60-459783; on October 21, 1992 she sustained a cervical strain, claim number 60-555268; on February 12, 1993 she sustained a right arm and shoulder strain, 60-563264; and on January 26, 1995 she sustained bilateral elbow sprains, 60-621388. On May 5, 1997 the Office doubled claim number 60-561644 for carpal tunnel syndrome, with claim number 60-621388 for bilateral elbow conditions. These two claims are identified by master claim number 60-561644, which is the only claim currently before the Board.

In a decision dated November 17, 1997, in master claim number 60-561644, the Office terminated appellant's entitlement to compensation benefits on the grounds that appellant's disability from either her accepted bilateral elbow strain or carpal tunnel syndrome had ceased.

By letter postmarked January 16, 1998, appellant requested an oral hearing before an Office representative. In a decision dated February 26, 1998, the Office denied her request for an oral hearing on the grounds that her request was not timely filed and that the issues could be equally well addressed by requesting reconsideration.

By letter dated February 16, 1998, appellant requested reconsideration and submitted additional evidence in support of her request. In a decision dated November 17, 1998, the Office found that the newly submitted evidence was insufficient to warrant modification of its prior decision.

By letter postmarked November 15, 1999, appellant, through counsel, requested reconsideration of the Office's prior decision and submitted additional evidence in support of her request. In a decision dated December 2, 1999, the Office denied her request on the grounds that she neither raised substantive legal questions nor included new and relevant evidence. The instant appeal follows.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.³ In the request for reconsideration, appellant's counsel asserted that appellant continued to suffer from shoulder impingement syndrome and that, therefore, she should be entitled to continuing compensation benefits. Counsel argued that appellant's shoulder problems have been related to her October 21, 1992 carpal tunnel syndrome and January 26, 1995 elbow injuries right from the start and that the Office has on several occasions authorized medical treatment for her shoulder condition. In support of his argument, counsel submitted copies of medical and documentary evidence already contained in the record which references appellant's shoulder conditions. As these documents are previously contained in the record, they are, therefore, duplicative. Material which is repetitious or duplicative of that already in the case

³ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁴

It is not disputed that appellant has sustained numerous employment-related injuries, including injuries to her shoulders. However, in its most recent merit decision dated November 17, 1998, the Office specifically noted that the instant claim involved only her accepted October 21, 1992 bilateral carpal tunnel syndrome and accepted January 26, 1995 bilateral elbow strain and found that the evidence of record was insufficient to establish that appellant continued to suffer from residuals of either of these conditions. With respect to appellant's most recent request for reconsideration, the Board notes that, neither the documents submitted, nor counsel's arguments, are relevant to the issues in the current claim, *i.e.*, whether appellant continues to suffer disabling residuals of either her accepted bilateral elbow sprains or her accepted bilateral carpal tunnel syndrome. Evidence which does not address the particular issue involved does not constitute a basis for reopening the claim.⁵ As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.⁶

The decision of the Office of Workers' Compensation Programs December 2, 1999 is hereby affirmed.

Dated, Washington, DC
March 23, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁴ See *James A. England*, 47 ECAB 115 (1995); *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

⁵ *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

⁶ The Board notes that, at the time the instant appeal was filed, the Office was in the process of determining whether appellant's prior claims should be reopened in order to allow appellant the proper forum to pursue her claim for shoulder impingement syndrome.